

UNCLASSIFIED

TELEGRAM

June 21, 2001

To: AMEMBASSY COLOMBO - ROUTINE

Origin: OES

From: SECSTATE WASHDC (STATE 108848 - ROUTINE)

TAGS: PBTS, PHSA, EAIR, EWWT, MARR, MV

Captions: None

Subject: PROTEST OF MALDIVES EXCESSIVE MARITIME CLAIMS

Ref: None

1. THIS IS AN ACTION REQUEST. POST IS REQUESTED TO DELIVER THE DIPLOMATIC NOTE SET FORTH IN PARAGRAPH 5 TO THE APPROPRIATE LEVEL OF THE GOVERNMENT OF MALDIVES (GOM). FOLLOWING DELIVERY OF THE NOTE, POST IS REQUESTED TO REPORT THE DATE OF THE NOTE, DATE OF DELIVERY AND THE REACTION OF THE GOM, IF ANY.

2. SUMMARY: IN THE MARITIME ZONES OF MALDIVES ACT NO. 6/96, THE GOM DECREED A NUMBER OF PROVISIONS WHICH ARE NOT IN CONFORMITY WITH INTERNATIONAL LAW, AS REFLECTED IN THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (THE LOS CONVENTION). THE LAW PURPORTS TO RESTRICT INNOCENT PASSAGE IN THE TERRITORIAL SEA, HIGH SEAS FREEDOMS OF NAVIGATION IN THE EXCLUSIVE ECONOMIC ZONE (EEZ) AND THE RIGHT OF ARCHIPELAGIC SEA LANES PASSAGE FOR MILITARY AIRCRAFT AND IN CREATING CERTAIN

ARCHIPELAGIC STRAIGHT BASELINE SEGMENTS, THE GOM HAS EXCEEDED
MAXIMUM LENGTHS.

3. BEGIN BACKGROUND (POST MAY WISH TO DRAW ON THESE POINTS,
THE TALKING POINTS
IN PARAGRAPH 4 AND THE SUBSTANCE OF THE NOTE IN PARAGRAPH 5,
IF THE GOM CHOOSES TO ENGAGE IN ANY DIALOGUE ON THIS ISSUE):

THE 1996 LAW PURPORTS TO DELIMIT THE MARITIME ZONES OF THE
GOM IN CONFORMITY
WITH THE LOS CONVENTION. ALTHOUGH MOST OF THE LAW'S
PROVISIONS ARE CONSISTENT
WITH INTERNATIONAL LAW, THERE ARE PROVISIONS THAT ILLEGALLY
RESTRICT
NAVIGATIONAL RIGHTS AND FREEDOMS IN THE TERRITORIAL SEA AND
EEZ AND HAMPER THE
RIGHT OF ARCHIPELAGIC SEA LANES PASSAGE FOR MILITARY
AIRCRAFT. IN ADDITION, TWO OF THE ARCHIPELAGIC STRAIGHT
BASELINES DRAWN BY THE GOM EXCEED THE MAXIMUM NUMBER OF
BASELINES IN EXCESS OF 100 NAUTICAL MILES PERMITTED BY THE
LOS CONVENTION.

THE UNITED STATES CONCERN WITH THE GOM MARITIME CLAIMS EXIST
ON TWO LEVELS. AS
NOTED IN DETAIL BELOW, WE VIEW THE CLAIMS AS INFRINGING ON
OUR RIGHTS IN
SPECIFIC AREAS OF THE SEAS SURROUNDING THE MALDIVES. SECOND,
IF LEFT UNPROTESTED, THE GOM CLAIMS COULD SET AN ADVERSE
PRECEDENT REGARDING THE DEVELOPMENT OF INTERNATIONAL PRACTICE
GENERALLY. SUCH ASSERTIONS OF JURISDICTION AND AUTHORITY
THAT EXCEED WHAT INTERNATIONAL LAW ALLOWS MUST BE CONFRONTED
OR OUR RIGHTS WILL DIMINISH AS WE MAY BE SEEN TO ACQUIESCE IN
SUCH CLAIMS. FOR THESE REASONS, THE UNITED STATES ROUTINELY
PROTESTS EXCESSIVE CLAIMS OF OTHER COUNTRIES.

END BACKGROUND.

4. BEGIN TALKING POINTS:

- SINCE 1983, THE UNITED STATES HAS ACCEPTED THE NON-SEABED TRADITIONAL-USE PROVISIONS OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AS REFLECTING CUSTOMARY INTERNATIONAL LAW, AND HAS ACTED ACCORDINGLY.

- I HAVE BEEN ASKED TO CONVEY TO YOU THE CONCERNS OF MY GOVERNMENT REGARDING CERTAIN PROVISIONS OF THE MARITIME ZONES OF MALDIVES ACT NO. 6/96.

- AS IS SET FORTH IN THE NOTE I HAVE BEEN ASKED TO GIVE YOU, THE ACT'S PROVISIONS REGARDING THE RIGHT OF INNOCENT PASSAGE THROUGH THE TERRITORIAL SEA, ENTRY OF FOREIGN SHIPS INTO THE EXCLUSIVE ECONOMIC ZONE AND ARCHIPELAGIC SEA LANES PASSAGE BY MILITARY AIRCRAFT ARE NOT IN ACCORDANCE WITH INTERNATIONAL LAW, INCLUDING THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA. IN ADDITION CERTAIN ARCHIPELAGIC STRAIGHT BASELINES EXCEED MAXIMUM LENGTHS PERMITTED BY INTERNATIONAL LAW.

- I WISH TO ASSURE YOU THAT MY GOVERNMENT'S OBJECTIONS TO THESE SECTIONS SHOULD NOT BE VIEWED AS SINGLING OUT THE MALDIVES FOR CRITICISM.

- THIS IS ONLY ONE OF A NUMBER OF U.S. DEMARCHES MADE OVER THE YEARS CONCERNING MARITIME CLAIMS BY COASTAL STATES THAT ARE NOT CONSISTENT WITH INTERNATIONAL LAW, AS REFLECTED IN THE 1982 CONVENTION ON THE LAW OF THE SEA.

- AS THESE ARE MATTERS OF CONSIDERABLE IMPORTANCE TO BOTH OUR COUNTRIES IN

MAINTAINING THE BALANCE OF INTERESTS SET OUT IN THE 1982 CONVENTION ON THE LAW OF THE SEA, THE UNITED STATES WOULD WELCOME THE OPPORTUNITY TO DISCUSS THESE MATTERS FURTHER BETWEEN EXPERTS FROM OUR TWO GOVERNMENTS.

END TALKING POINTS

5. BEGIN TEXT OF U.S. NOTE: (COMPLIMENTARY OPENING) AND HAS THE HONOR TO REFER TO THE MARITIME ZONES OF MALDIVES ACT NO. 6/96 AS PUBLISHED IN THE UNITED NATIONS LAW OF THE SEA BULLETIN NO. 41 (1999).

THE GOVERNMENT OF THE UNITED STATES NOTES THAT ARTICLE 13 OF THE ACT REQUIRES PRIOR AUTHORIZATION BY THE GOM BEFORE ENTRY INTO THE TERRITORIAL SEA OF FOREIGN WARSHIPS, NUCLEAR-POWERED SHIPS AND SHIPS CARRYING ANY NUCLEAR OR OTHER INHERENTLY DANGEROUS OR NOXIOUS SUBSTANCES. THIS REQUIREMENT IS INCONSISTENT WITH INTERNATIONAL LAW.

THE UNITED STATES WISHES TO RECALL THAT CUSTOMARY INTERNATIONAL LAW, AS REFLECTED IN ARTICLES 17 TO 26 AND ARTICLE 52 OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (LOS CONVENTION), PROVIDES THAT THE SHIPS OF ALL STATES ENJOY THE RIGHT OF INNOCENT PASSAGE THROUGH THE TERRITORIAL SEA OF A COASTAL STATE AS WELL AS THE ARCHIPELAGIC WATERS OF AN ARCHIPELAGIC STATE. INNOCENT PASSAGE IS A NAVIGATIONAL RIGHT THAT MAY BE EXERCISED WITHOUT REQUIREMENT TO PROVIDE PRIOR NOTIFICATION TO OR OBTAIN PERMISSION FROM THE COASTAL STATE. THIS RIGHT APPLIES TO ALL SHIPS, REGARDLESS OF FLAG, TYPE, MEANS OF PROPULSION, CARGO, DESTINATION, ARMAMENT, OR PURPOSE OF VOYAGE. PASSAGE IS INNOCENT SO LONG AS IT IS NOT PREJUDICIAL TO THE PEACE,

GOOD ORDER OR SECURITY OF THE COASTAL STATE. PASSAGE IS CONSIDERED TO BE PREJUDICIAL TO THE PEACE, GOOD ORDER OR SECURITY OF THE COASTAL STATE IF A FOREIGN SHIP ENGAGES IN ONE OF TWELVE SPECIFIC ACTIVITIES LISTED IN ARTICLE 19(2) OF THE 1982 CONVENTION. MERE PASSAGE OF A WARSHIP, NUCLEAR-POWERED SHIP OR SHIP CARRYING NUCLEAR OR OTHER INHERENTLY DANGEROUS OR NOXIOUS SUBSTANCES IS NOT INCLUDED IN THE LIST OF ACTIVITIES CONTAINED IN ARTICLE 19(2).

THE UNITED STATES ALSO WISHES TO RECALL THAT A COASTAL STATE MAY, CONSISTENT WITH INTERNATIONAL LAW, ADOPT LAWS AND REGULATIONS RELATING TO INNOCENT PASSAGE TO THE EXTENT SUCH REQUIREMENTS DO NOT HAMPER INNOCENT PASSAGE OR DO NOT HAVE THE PRACTICAL EFFECT OF DENYING OR IMPAIRING THE RIGHT OF INNOCENT PASSAGE. (ARTICLES 21 AND 24, LOS CONVENTION).

THE UNITED STATES WOULD ADDITIONALLY RECALL THAT THE TRANSPORT OF NUCLEAR OR OTHER INHERENTLY DANGEROUS MATERIAL IS REGULATED BY A NUMBER OF INTERNATIONAL AGREEMENTS, INCLUDING THE LOS CONVENTION (ARTICLES 22 AND 23), THE INTERNATIONAL MARITIME ORGANIZATION (IMO) CODE FOR THE SAFE CARRIAGE OF IRRADIATED NUCLEAR FUEL, PLUTONIUM, AND HIGH-LEVEL RADIOACTIVE WASTE ON BOARD SHIPS, THE IMO INTERNATIONAL MARITIME DANGEROUS GOODS CODE, THE PHYSICAL PROTECTION CONVENTION AND THE INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA) REGULATIONS FOR THE SAFE TRANSPORT OF RADIOACTIVE MATERIAL. THESE PROVISIONS DO NOT ALLOW A COASTAL STATE TO PROHIBIT THE INNOCENT PASSAGE OF SUCH SHIPS THROUGH THE TERRITORIAL SEA OR TO CONDITION SUCH TRANSIT ON PRIOR NOTIFICATION OR AUTHORIZATION.

THE UNITED STATES NOTES THAT ARTICLE 14 OF THE ACT PURPORTS TO REQUIRE ALL "FOREIGN VESSELS" TO OBTAIN THE AUTHORIZATION OF THE GOM BEFORE

ENTERING THE EXCLUSIVE
ECONOMIC ZONE. THIS REQUIREMENT IS INCONSISTENT WITH
INTERNATIONAL LAW.

THE UNITED STATES WISHES TO RECALL THAT, WITHIN THE EXCLUSIVE
ECONOMIC ZONE, A
COASTAL STATE HAS SOVEREIGN RIGHTS FOR THE PURPOSE OF
EXPLORING, EXPLOITING,
CONSERVING, AND MANAGING THE LIVING AND NON-LIVING NATURAL
RESOURCES OF THE
WATER COLUMN AND THE SEA-BED AND ITS SUBSOIL. THE COASTAL
STATE ALSO HAS
JURISDICTION WITH REGARD TO THE PROTECTION AND PRESERVATION
OF THE MARINE
ENVIRONMENT, MARINE SCIENTIFIC RESEARCH AND THE ESTABLISHMENT
AND USE OF
ARTIFICIAL ISLANDS, INSTALLATIONS AND STRUCTURES FOR ECONOMIC
PURPOSES. HOWEVER, A COASTAL STATE'S RIGHTS AND
JURISDICTION WITHIN THE EXCLUSIVE ECONOMIC ZONE ARE SUBJECT
TO THE RIGHTS AND DUTIES OF OTHER STATES AS PROVIDED FOR IN
INTERNATIONAL LAW, INCLUDING ARTICLE 58 OF THE 1982
CONVENTION. THE RIGHTS SPECIFICALLY PRESERVED FOR THE SHIPS
AND AIRCRAFT OF ALL STATES IN THE EXCLUSIVE ECONOMIC ZONE
INCLUDE THE FREEDOMS OF NAVIGATION AND OVERFLIGHT, AND OTHER
INTERNATIONALLY LAWFUL USES OF THE SEA RELATED TO THOSE
FREEDOMS, WITHOUT REQUIREMENT TO PROVIDE PRIOR NOTIFICATION
TO OR OBTAIN THE PRIOR PERMISSION FROM THE COASTAL STATE.

TO THE EXTENT ARTICLE 14 OF THE ACT PURPORTS TO CONDITION
FREEDOMS OF
NAVIGATION AND OVERFLIGHT, AND OTHER LAWFUL USES OF THE SEA
RELATED TO THOSE
FREEDOMS, IN THE MALDIVES EXCLUSIVE ECONOMIC ZONE ON PRIOR
AUTHORIZATION, IT IS
INCONSISTENT WITH INTERNATIONAL LAW.

THE UNITED STATES ALSO NOTES THAT ARTICLE 15 OF THE ACT

PURPORTS TO LIMIT
OVERFLIGHT OF THE ARCHIPELAGIC WATERS OF THE MALDIVES BY
FOREIGN MILITARY
AIRCRAFT AND TO REQUIRE PRIOR AUTHORIZATION BY THE GOM. THIS
REQUIREMENT IS
ALSO INCONSISTENT WITH INTERNATIONAL LAW.

INTERNATIONAL LAW, AS REFLECTED IN ARTICLE 53 OF THE LOS
CONVENTION, PROVIDES THAT ALL SHIPS AND AIRCRAFT, INCLUDING
MILITARY AIRCRAFT, ENJOY THE RIGHT OF ARCHIPELAGIC SEA LANES
PASSAGE OVER ARCHIPELAGIC WATERS AND THE ADJACENT TERRITORIAL
SEA. THIS RIGHT MAY NOT BE CONDITIONED ON A REQUIREMENT TO
PROVIDE PRIOR NOTIFICATION TO OR OBTAIN PRIOR PERMISSION FROM
THE ARCHIPELAGIC STATE. THE RIGHT OF ARCHIPELAGIC SEA LANES
PASSAGE MAY BE EXERCISED IN ACCORDANCE WITH INTERNATIONAL LAW
THROUGH ALL ROUTES NORMALLY USED FOR INTERNATIONAL
NAVIGATION. ARCHIPELAGIC SEA LANES PASSAGE MEANS THE
EXERCISE OF THE RIGHTS OF NAVIGATION AND OVERFLIGHT IN THE
NORMAL MODE SOLELY FOR THE PURPOSE OF CONTINUOUS, EXPEDITIOUS
AND UNOBSTRUCTED TRANSIT BETWEEN ONE PART OF THE HIGH SEAS OR
AND EEZ AND ANOTHER PART OF THE HIGH SEAS OR EEZ. THE RIGHT
OF ARCHIPELAGIC SEA LANES PASSAGE CANNOT BE HAMPERED OR
SUSPENDED FOR ANY PURPOSE. (LOS CONVENTION, ARTICLES 54, 44,
42)

FINALLY, THE UNITED STATES NOTES THAT IN SCHEDULE 1 OF THE
ACT, THIRTY SEVEN STRAIGHT ARCHIPELAGIC BASELINES ARE DEFINED
BY A LISTING OF GEOGRAPHIC COORDINATES. THREE SEGMENTS
(14-15, 28-29, AND 36-37) EXCEED 100 NAUTICAL MILES IN
LENGTH. UNDER ARTICLE 47(2) OF THE LOS CONVENTION, ONLY UP
TO THREE PERCENT OF THE TOTAL NUMBER OF A COUNTRY'S
ARCHIPELAGIC BASELINES MAY EXCEED 100 NAUTICAL MILES IN
LENGTH UP TO A MAXIMUM OF 125 NAUTICAL MILES. THUS, UNDER
INTERNATIONAL LAW, MALDIVES MAY ONLY HAVE ONE BASELINE THAT
EXCEEDS 100 NAUTICAL MILES IN LENGTH. HOWEVER, THESE
SEGMENTS COULD BE REVISED SO AS TO MEET THE LENGTH
REQUIREMENTS WHILE REMAINING WITHIN THE LAND TO WATER RATIOS

SPECIFIED IN ARTICLE 47(1) OF THE LOS CONVENTION.

ACCORDINGLY, THE UNITED STATES RESERVES ITS RIGHTS AND THE
RIGHTS OF ITS NATIONALS IN THIS REGARD.

(COMPLIMENTARY CLOSE)

END TEXT OF U.S. NOTE
POWELL

Additional Addressees:

None

cc:

AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY NEW DELHI

AMEMBASSY PARIS

AMEMBASSY TOKYO

SECDEF WASHDC 0000

JOINT STAFF WASHDC 0000

CNO WASHDC

NAVAL WAR COLLEGE NEWPORT RI

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FM SECSTATE WASHDC

TO AMEMBASSY COLOMBO

INFO AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY NEW DELHI

AMEMBASSY PARIS

AMEMBASSY TOKYO

SECDEF WASHDC 0000

JOINT STAFF WASHDC 0000
CNO WASHDC
NAVAL WAR COLLEGE NEWPORT RI

UNCLAS STATE 108848

E.O. 12958: N/A

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